

REMARKSSTATUS OF CLAIMS

The Office Action dated September 26, 2002 has been received and its contents carefully considered. Claims 2-9, 12-18 and 20-22 are pending. Claims 4, 14 and 20 are independent.

Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the following remarks.

OFFICE ACTION

Claims 2-9, 12-18 and 20-22 were rejected under 35 U.S.C. §103(a) as being unpatentable over the admitted prior art (Figure 1) in view of Howard '531. This rejection is respectfully traversed with respect to the following reasons.

Without conceding the propriety of the rejections, claim 4 recites, in part, a liquid level gauge; and a scale disposed on said liquid level gauge, wherein said incubator is substantially rectangular in shape with a front door coincident with a plane which includes a front face of the incubator and wherein said incubator is a water jacket incubator. Applicant's own admitted prior art (Figure 1) shows a water jacket incubator 5 having walls 14, 16, 18; a top 10; a bottom 12; a door 19; a drain 13; a fill-hole 15 and a control panel 11. Control panel 11 monitors heating elements and temperature within the enclosure or incubator (see specification, pg. 2, line 18). Control panel 11 may also monitor an electrical signal of a closed grounding loop that operates an alarm when water drops below the grounding loop (see specification, pg. 4, line 19). Clearly, control panel 11 is electrical in nature and not mechanical as presently claimed.

Furthermore, Control panel 11 uses this grounding loop as a "sensor" of relative electrical current and not a liquid level gauge or measurement device. A commonly accepted definition of a gauge according to Webster's Collegiate Dictionary, 10<sup>th</sup> Edition is "an instrument with a graduated scale or dial for measuring or indicating quantity." Clearly, control panel 11 fails to meet such a definition. Control panel 11 senses an electrical signal with no true quantitative measurement being made. In accordance with the M.P.E.P. §2143.03, to establish a *prima facie* case of obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re: Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re: Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494 196 (CCPA 1970). Thus, applicant's admitted prior art (Figure 1) cannot be said to teach or suggest a liquid level gauge; and a scale disposed on said liquid level gauge, wherein said incubator is substantially rectangular in shape with a front door coincident with a plane which includes a front face of the incubator and wherein said incubator is a water jacket incubator as claimed in the present invention. Howard '531 does not overcome the deficiencies of the admitted prior art and in no way teaches a water jacket incubator. Howard '531 shows a water coil that is structurally within the incubator enclosure and not surrounding the enclosure as is the structure of a water jacket.

Claim 14 recites, in part, means for monitoring a level of fluid; means for adjusting the level of said fluid; and means for mounting the fluid level monitoring device into a front face of an incubator, wherein said monitoring device is mounted flush with said front face. Applicant's own admitted prior art (Figure 1) shows a water jacket incubator 5 having walls 14, 16, 18; a top 10; a bottom 12; a door 19; a drain 13; a fill-hole 15 and a control panel 11. Control panel 11 monitors heating elements and temperature within the enclosure or incubator (see specification,

pg. 2, line 18). Control panel 11 may also monitor an electrical signal of a closed grounding loop that operates an alarm when water drops below the grounding loop (see specification, pg. 4, line 19). Clearly, control panel 11 is electrical in nature and not mechanical as presently claimed.

Furthermore, Control panel 11 uses this grounding loop as a “sensor” of relative electrical current and not a liquid level gauge or measurement device. A commonly accepted definition of a gauge according to Webster’s Collegiate Dictionary, 10<sup>th</sup> Edition is “an instrument with a graduated scale or dial for measuring or indicating quantity.” Clearly, control panel 11 fails to meet such a definition. Control panel 11 senses an electrical signal with no true quantitative measurement being made. In accordance with the M.P.E.P. §2143.03, to establish a *prima facie* case of obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re: Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re: Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494 196 (CCPA 1970). Thus, applicant’s admitted prior art (Figure 1) cannot be said to teach or suggest a means for monitoring a level of fluid; means for adjusting the level of said fluid; and means for mounting the fluid level monitoring device into a front face of an incubator, wherein said monitoring device is mounted flush with said front face as claimed in the present invention. Howard ‘531 does not overcome the deficiencies of the admitted prior art and in no way teaches a water jacket incubator. Howard ‘531 shows a water coil that is structurally within the incubator enclosure and not surrounding the enclosure as is the structure of a water jacket.

Claim 20 recites, in part, the steps of visibly monitoring a liquid level in said incubator by visibly measuring a maximum and a minimum liquid level of said incubator and adjusting said

liquid level in said incubator, wherein said incubator is a water jacket incubator. Applicant's own admitted prior art (Figure 1) shows a water jacket incubator 5 having walls 14, 16, 18; a top 10; a bottom 12; a door 19; a drain 13; a fill-hole 15 and a control panel 11. Control panel 11 monitors heating elements and temperature within the enclosure or incubator (see specification, pg. 2, line 18). Control panel 11 may also monitor an electrical signal of a closed grounding loop that operates an alarm when water drops below the grounding loop (see specification, pg. 4, line 19). Clearly, control panel 11 is electrical in nature and not mechanical as presently claimed.

Furthermore, Control panel 11 uses this grounding loop as a "sensor" of relative electrical current and not a liquid level gauge or measurement device. A commonly accepted definition of a gauge according to Webster's Collegiate Dictionary, 10<sup>th</sup> Edition is "an instrument with a graduated scale or dial for measuring or indicating quantity." Clearly, control panel 11 fails to meet such a definition. Control panel 11 senses an electrical signal with no true quantitative measurement being made. In accordance with the M.P.E.P. §2143.03, to establish a *prima facie* case of obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re: Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re: Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494 196 (CCPA 1970). Thus, applicant's admitted prior art (Figure 1) cannot be said to teach or suggest the steps of visibly monitoring a liquid level in said incubator by visibly measuring a maximum and a minimum liquid level of said incubator and adjusting said liquid level in said incubator, wherein said incubator is a water jacket incubator as claimed in the present invention. It should also be noted that no where does the admitted prior art teach a "minimum liquid level" as mentioned in the art rejection. The

admitted prior art only states an inadequate water level (see specification page 4, line 20).

Obviously, an inadequate water level may be above a minimum level but just below an adequate water level and thus does not suggest a minimum.

Howard '531 does not overcome the deficiencies of the admitted prior art and in no way teaches a water jacket incubator. Howard '531 shows a water coil that is structurally within the incubator enclosure and not surrounding the enclosure as is the structure of a water jacket. Moreover, a modification of the admitted prior art's control panel 11 as suggested by the examiner with respect to claim 20 by using the teachings of Howard '531 would destroy control panel 11 both functionally and structurally in this case.

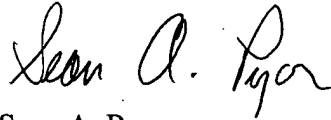
For the foregoing reasons, it is respectfully submitted that the invention recited in claims 4, 14 and 20 is patentable over the admitted prior art (Figure 1) in view of Howard '531. Thus, it is respectfully submitted that the remaining depending claims are allowable for at least the reasons given herein.

In view of the foregoing, reconsideration and allowance of the application are believed in order, and such action is earnestly solicited.

Should the Examiner believe that a telephone conference would expedite issuance of the application, the Examiner is respectfully invited to telephone the undersigned agent at 202/861-1748.

Respectfully submitted,

BAKER & HOSTETLER LLP

A handwritten signature in black ink, appearing to read "Sean A. Pryor". The signature is fluid and cursive, with the first name "Sean" and last name "Pryor" clearly distinguishable.

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